IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELALTE JURISDICTION

CRIMINAL APPEAL NO.298 OF 2001

Vilas Ananda Vandre
(resident of Shivnakwadi
Navin Vasahat, Tal:Shirol Appellant/
Dist: Kolhapur) ...(Original accused)

Versus

The State of Maharashtra ..... Respondent.

Miss Latika Khemani, Advocate appointed for the appellant.
Dr.F.R.Shaikh, APP for the State.

CORAM: S.B.MHASE &
S.R.SATHE,JJ.
DATE :17TH JUNE 2005.

ORAL JUDGEMENT (PER S.B.MHASE,J):

1. This Appeal is directed against the Judgement

and Order in Sessions Case No. 127 of 2000 delivered by IIIrd Additional Sessions Judge, Kolhapur on 3rd February 2001 whereby, the accused was found guilty under Sections 498(A) , 304(B) and 302 of the Indian Penal Code and was sentenced to suffer Rigorous Imprisonment for 10 years for offence under Section 304 (B) of the Indian Penal Code and to pay fine of Rs.2000/- in default to suffer Rigorous Imprisonment for six months and also sentenced to undergo life imprisonment for the offence punishable under Section 302 of the Indian Penal Code and to pay fine of Rs.2000/-, in default to suffer Rigorous Imprisonment for six months. No separate sentence was imposed under Section 498(A) of the Indian Penal Code as, it is lesser offence.

2. The brief facts of the case are as under; Marriage of deceased Sangita was performed with accused Vilas Vandre on 25/11/1999. At that time document (Exhibit 28), namely, List (Yadi) was prepared wherein, it is agreed between the parties that the bridegroom has to give to bride haldi-kunku, coconut, mangalsutra weighing upto 4 aanas. The List further showed that from the side of the bride, they have to offer to the bridegroom haldi-kunku, coconut, earrings weighing 4 aanas, 4 aanas gold to be placed

in Mangalsutra which is being offered from the bridegroom side and one golden beads chain weighing half a tola (approximately 5 gms) and a dress of the bridegroom and sarees to the bride. Thus, as agreed the marriage was performed. However, father of the deceased Sangita has not given golden beads chain to the bridegroom at the time of marriage though rest of the articles were given. According to the prosecution, after 15 days of the marriage of Sangita, PW 1 father of Sangita namely Appa visited her house. At that time when other in-laws were not in the house, Sangita disclosed to PW 1 that due to not giving of golden beads chain, accused Vilas was quarrelling, threatening and abusing her and was insisting that either she shall get the golden beads chain and/or the money. It is further stated that on 20/3/2000, brother-in-law of the deceased Sangita, namely, Mahadev (sister of the accused is wife of Mahadev) and the accused came alongwith the deceased to the house of PW 1 Appa and disclosed that accused was harassing deceased Sangita on the count of golden beads chain and Sangita was likely to commit suicide by jumping in the well and therefore, the said Mahadev, brother-in-law of the deceased Sangita had brought the deceased to her parents house. After 2/3 days again Mahadev came and told that PW 1 Appa shall send Sangita to accused for co-habitation, otherwise the

accused would commit suicide. There was meeting of respectable persons and accused signed the Undertaking to the effect that, henceforth he will behave properly with deceased Sangita. However, ultimately Sangita reported to be dead on 26/4/2000.

3. The death of Sangita has taken place on 26/4/2000 in the house of the accused at Shivnakvadi, Shirol, Kolhapur. As per the Post-Mortem Report (Exhibit 25) Sangita has died due to shock due to multiple injuries on head with contusion of brain tissue with Intra-cranial and Intra cerebral Haemorrhage. Therefore, the prosecution of the accused/appellant.

4. Initially A.D. No.25/2000 was registered by PW 11 Shamrao Nana Kurane on the basis of information given by accused at Exhibit 55. Accused had reported that on the day of incident at 9.15 a.m. he had been to his employer for getting money on loan. However, his employer was not available and therefore, he waited till 11.00 a.m. When accused returned back he found that the door was locked from inside and therefore, he peeped in through the door and had found that the deceased had strangulated herself and therefore, he called the neighbours and thereafter removed the door and deceased was taken on the ground

and it was found that she was dead. In view of registration of this A.D., prosecution proceeded to inquire into the A.D. and prepared Inquest Panchnama (Exhibit 21). The place of inquest is the house of the accused and the dead body was on cot. Panchas had examined head of the deceased by inserting their fingers in the hairs and they had found that near the ears and at the centre of the head, there was a swelling . They had also found that close to eyebrow, there was black dot and there was swelling. It is further revealed that on right leg ankle and palm , left calf and palm and on left hand close to the wrist, it was written that ‘‘**My murderer is Vilas"** and **‘‘Vilas my murderer**’’. There was no injury or ligature mark found at the time of inquest, on the neck of the deceased. However, since there were writings on the body as reflected in Inquest Panchnama, the police have also taken the photographs of the deceased and more specifically of the portion where it was written ‘‘Vilas is the murderer’’or ‘‘my murderer is Vilas’’. This prima facie pointed out to the police that theory or story of strangulation as reported by the accused is not correct. To know the exact cause of death of Sangita the body was sent for post mortem. Post Mortem report is at Exhibit 25. The said report is proved by PW 3 Dr.Hetawade. He noticed following external injuries.

i) Contusion with haematoma above right eyebrow 4 x 3 cm.
ii) Contusion with haematoma on right posterior region. Haematoma circular form.
iii) Contusion with haematoma formation at temporal region of skull size 3 x 2 cm.
iv)Contusion with haematoma formation at middle of scalp 3 x 2 c.m.
v)Contusion with haematoma formation on Anterior aspect of injury no.4.
vi)Contusion with haematoma formation on posterior aspect of injury no.4 size 3 x 3 c.m.

Internal examination shows fracture of lower and right side of frontal bone. On examination of brain the doctor found contusion of right lobe at frontal region. Blood clots and haemorrhage was seen.Contusion of temporal lobe of brain with blood clots and fine haemorrhage. Contusion middle and upper side of right hemisphere of brain with blood clots. On temporal and right frontal region extradural haemorrhage. On right upper side of cerebra hemisphere subdural haemorrhage etc. Therefore, the doctor concluded that the death was **‘‘Due to shock due to multiple injuries on head with contusion of brain tissue with intra cranial and intra cerebral haemorrhage.’’** More specifically doctor has noted that there was no ligature marks seen during the external examination of the dead body. From this evidence it stands concluded that the death of the deceased Sangita was not as a result of hanging or strangulation but, it was a death due to multiple

injuries which were externally noticed by the doctor on head which corresponds with the internal injuries as reflected from the Post Mortem Report. This concludes that the death was homicidal death because it is impossible for the deceased herself to inflict all these injuries on head and commit suicide. It is nobody's case that these injuries were self inflicted injuries.

5. Having found that the death is homicidal one, the next question which arises for our scrutiny is, as to who is responsible for the said death and therefore, we have to look to the testimony of other witnesses. PW 1 Appa who is the father of the deceased has proved FIR lodged by him on 27.4.2000. This report is lodged immediately after the post mortem, when it was disclosed and was realised from the Post Mortem Report that the death is not suicidal one but, it is homicidal one. It is revealed from FIR that the marriage was solemnized on 15/11/1999 as per Yadi (Exhibit 28). Testimony of complainant shows that golden bead chain was not given by him to the accused. On that count there was harassment of deceased Sangita and the fact that after 15 days of marriage, he visited to his daughter's house, and in absence of in laws Sangita disclosed that she was being harassed and abused by the accused since golden

beads necklace has not been given as agreed. It is further revealed that after some days one Mahadev, brother-in-law of Sangita and accused, had brought Sangita to her parents house with a grievance that she was being harassed on account of not giving golden beads chain and she was proceeding to commit suicide and therefore, she had been brought to her parents. After 3/4 days again the said Mahadev came and reported that Sangita should be sent for co-habitation, otherwise accused would commit suicide . Therefore, there was meeting of the respectable persons, wherein Undertaking Exhibit 29 was executed by accused, and Sangita was sent to her husband's house. In Exhibit 29 accused had accepted his mistakes in ill-treating Sangita and assured that henceforth he will not ill-treat her and would be ready to undergo any punishment given by the panchayat. Thereafter, the incident of 26.4.2000 had taken place.

6. PW 1 Appa has stated and proved the FIR. PW 8 Suresh Parsu Sawant and 9 Ravindra Appa Sawant, both have supported PW 1 in material particulars in respect of all the incidents which have been deposed by PW 1. PW 4 (Shivaji S.Harane) has proved Yadi-Exhibit 28 and Exhibit 29-Undertaking since he was the signatory to that Undertaking as a panch. This material clearly

establishes that Sangita was being harassed , ill treated cruelly in the family of accused and by the accused since golden beads chain as agreed in the marriage was not given to the accused. Thus, it proves further that since dowry was not satisfied , Sangita was treated with cruelty.

7. To counter this evidence DW 1 (Mahadev Nagoji Patil) has been examined. However, we can not forget that Mahadev is a brother in law of accused and in examination in chief he states that Sangita was leading happy life with accused and in the next breath he says that she was mentally disturbed. Therefore, she tried to commit suicide. What was the cause for mental disturbance has not been explained by the said witness for defence. This witness is not a reliable witness on this count. We reject his testimony. We record our findings that offence under Section 498(A) of Indian Penal Code has been proved by the prosecution beyond reasonable doubt.

8. Keeping this aspect in mind we proceed to consider as to whether accused is responsible for the death of Sangita. In this light we have to note that death has taken place in the house of the accused and till 9 o’clock accused was in the company of the deceased. Thereafter he left the house to get loan

from his employer and when he returned back and he found that doors were closed and therefore, he peeped through the door and found that dead body of the deceased was hanging by saree and therefore, he opened the door after making hue and cry and has taken the dead body down and accordingly he had lodged the report also. But we have to state at the inception that this report and story made out by the accused is a cock and bull story. We note that to support the case of the accused there is evidence of PW 7 (Raju S.Shaikh). PW 7 has stated that he has started construction of his house adjoining to accused . On 26/4/2000 he was collecting water for construction of his house. Accused came from outside . Both the doors of the house of accused were closed from inside. He broke open the door of the rear side. Thereafter he started shouting. They went towards his house. Accused disclosed that his wife has hanged herself and asked us to inform his brother-in-law Mahadev. Accordingly he informed Mahadev. When he was collecting water he saw accused was going to Shiradwadi. No doubt this witness has been examined by the prosecution and there is no cross examination of this witness. We observe that this witness in fact should not have been examined by the prosecution and when he has partially supported the theory of defence, the prosecutor conducting trial was under obligation

to find out whether his statement is consistent with the statement recorded under Section 161 by the Police Officer. That precaution has not been taken. However, even the statement of this witness does not support the defence because in his statement he has not stated that he had visited the house of accused. He only states that he was collecting water for construction of his house. On what basis he makes a statement that both the doors of the house of the accused were closed from inside, is not known since he has not visited the said spot. Thereafter he only states that the door was opened from the backside and thereafter accused made hue and cry. That means prior to opening of door accused has not made any hue and cry. After hue and cry also, this witness is not deposing that, he has seen the deceased in hanging position. He has deposed that accused disclosed that his wife has hanged herself and asked to inform his brother-in-law. Therefore, this witness has neither seen the deceased in a hanging position nor has he helped the accused in getting down the dead body of deceased Sangita on the cot from the middle rafter of the house and therefore, whatever this witness is stating is simplicitor surmises, which is told by the accused to the witness. Eventhough this witness is not cross examined by the prosecutor or by the accused,his testimony does not affect prosecution

case. In any event we discard the evidence of PW 7. We further find that testimony of this witness is absolutely inconsistent with the Post Mortem Report and the injuries found by the doctor and therefore, we have no hesitation in mind that this witness is a won over witness by the defence. No doubt that the prosecution who conducted the case was callous one in not discharging his duties. Otherwise, he would have cross examined PW 7.

9. Leaving aside that part, we find that PW 7 is not of any help to the defence because Post Mortem Report (Ex.25), as discussed above shows that there were head injuries externally which corresponds to the internal injuries. Inquest Panchnama also supports the said things. From the Inquest Panchnama it has become evident that on the body of the deceased, on both palms, left hand wrist and then on both legs as revealed from the Inquest Panchnama, there was writing to the effect that Vilas is the murderer of the deceased. The photographs of these writings were taken by two photographers. PW 6 (Bhausaheb N.Chougule) and PW 14 (Ajit B. Rajmane) are the photographers and PW 6 has deposed in respect of specific photographs which were taken by him. Writings available from that photographs coupled with natural writing of the deceased which was obtained by

the Investigating Officer was sent to the Hand Writing Expert. Testimony of the Hand Writing Expert (PW 10) is at Ex. 50. The Hand Writing Expert has opined that questioned document 1 & 3 are in the hand writing of the person who wrote the writing marked as N-1 and N-6. That means natural writing marked at N-4 and N-3 tallies with the photographs in respect of writing marked as Q-5 and Q-6, no opinion was expressed as there was no clear identity with natural writing. However, as a result of this , it has been established that questioned writing which implicates accused as a murderer of the deceased is in the hand writing of the deceased as it tallies with natural writing of the deceased and thus, deceased prior to her death, in a way stated who is the murderer of the deceased. This evidence of the prosecution has been faintly challenged and the challenge is inconsequential. The prosecution is successful in proving that the questioned hand writing tallies with the natural hand writing of the deceased. Therefore, these writings have value of Dying Declarations at the behest of the deceased itself. The deceased had followed this mode of communication as, there was no one available for her to disclose who was the assailant and thus, deceased has communicated by way of such writings that the murderous attack on the deceased was made by the accused. Thus the deceased Sangita has made a

statement by these writings stating the cause of her death.

10 Taking advantage of these writings learned counsel for the defence tried to submit that if the deceased was beaten by the accused, then in those circumstances where was the chance for the deceased to write down this information. However, this argument is without any merit because we can not forget that it is a case of custodial death and it is for the accused to explain as to how death has been caused. Injuries on the head of deceased show that the deceased was beaten and sugarcane has been recovered. The cause of death has taken due to shock due to multiple injuries on head with contusion of brain tissue and with intra-cranial and intra cerebral haemorrhage. This cause shows that death has not taken instantaneously but after beating, some time was required to have that shock which caused death. That time span has been utilized by the deceased to carry on writings on body to name the assailant. Viewed from any angle, the fact remains that these were the writings on person of the deceased and the deceased had an opportunity prior to her death to write all these statements on her body communicating the cause of her death. Coupled with this, one more important aspect is that had the deceased committed suicide by strangulation, there

would have been ligature marks on her body. Absence of such marks dispel out suicide at the hands of the deceased. Therefore, the only conclusion follows is that it was a homicidal death at the hands of the accused only,who was in the company of the deceased admittedly since, he himself has stated that till 9 o'clock when he left the house deceased was alive and when he returned back deceased was dead. Therefore, on his own version which he gave to the police vide Ex.55- Vardi, it is proved that deceased was alive when accused left house and was found to be dead when he returned back. PW 7 has stated in his deposition that he had seen the accused going out from the said house and returning back. This is a specific modus operandi of the accused; he himself committed murder of the deceased, left the premises, thereafter came, made a show that the premises was closed from inside, shouted and without getting aid of anybody he himself entered in the said room from the back door without breaking open back door. He only shouted that the deceased is dead by strangulation and conveyed that information to PW 6 who did not bother to see personally whether the deceased was dead by strangulation or not. All this conduct shows farcical approach of the accused in misdirecting the neighbour and the police machinery to register the A.D. instead of offence under Section 302 of the Indian Penal Code.

In fact, in a given circumstances, it was for the accused to explain as to how the death of Sangita had taken place and how injuries were found on person of the deceased. Such burden, even on the basis of preponderance of probability has not been discharged by the accused. It is because of the custodial death as has been held by the Supreme Court in a reported judgement, the only inference follows is that all those external injuries corresponding to internal injuries are caused by the accused . Accused has also produced sugar-cane which was used by him for beating the deceased, which was recovered at the instance of the accused. The said discovery is mentioned in Panchnama Exhibit 32 and statement Exhibit 31. The sugar-cane was discovered from the house of accused which was kept in one of the barrel which was within the knowledge of the accused only. Discovery Panchnama and the statement is reliable one and nothing has transpired in cross examination to disbelieve it. Therefore, taking all the circumstances into consideration, the only inference follows is that it is the accused who is the culprit for offence u/s 302 and 498-A. Therefore, we record our findings that prosecution has established offence u/s 498-A and also 302 of the Indian Penal Code.

11. The Sessions Judge has convicted the appellant

u/s 302 and also u/s 304-B of the Indian Penal Code. As stated in the earlier part of the Judgement, the Sessions Judge has awarded sentence to suffer R.I. for 10 years for offence u/s 304(B) of the Indian Penal Code and to pay fine of Rs. 2,000/- in default to suffer R.I. for six months. For offence u/s 302, the appellant is sentenced to undergo life imprisonment and to pay fine of Rs.2,000/-, in default to suffer R.I. for six months. No separate sentence was imposed u/s 492 of the Indian Penal Code. We have found that the accused is guilty under Sections 302 and 498(A) as revealed from the discussions in above paras. Now the question is whether conviction under Section 304 (B) is to be maintained as against the appellant. Learned counsel for the appellant submitted that conviction u/s 302 and 304(B) of the Indian Penal Code simultaneously given by the Sessions Judge is erroneous. He submitted that ingredients of Section 304 (B) are different from the ingredients of Section 302 of the Indian Penal Code. He further submitted that both offences are separate and distinct offences and therefore, conviction on both counts with the same set of facts is not permissible. He submitted that ingredients of Section 304 (B) as explained by the Honourable Apex Court in **Shanti Versus State of Haryana reported in AIR 1991 SC page 1226** are the same and has accordingly followed

the essentials of the offence u/s 304(B) as under.

(i) death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.

(ii) such death should have occurred within 7 years of her marriage.

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) such cruelty or harassment should be for or in connection with demand for dowry.

12. He submitted in contradistinction with these ingredients of Section 304(B), ingredients of Section 300 are very different and therefore, he submitted that the conviction under Section 304(B) is not sustainable. We accept this submission. No discussion is required on this point that the offence of murder under Section 300 and the offence punishable under Section 302 is quite distinct and separate from the offence under Section 304(B) of the Indian Penal Code. Therefore, we find that the conviction given by the Sessions Court under Section 304(B) of Indian

Penal Code is not correct and we hereby set aside.

13. Since we are maintaining the conviction of the accused under Section 302, we are not imposing separate conviction as recorded by the Sessions Court for offence punishable u/s 498(A).

14. In the result the Appeal is partly allowed.

The conviction and the sentence of the appellant u/s 304(B) is hereby set aside. However, we maintain the conviction of the appellant u/s 302 and 498(A) of the Indian Penal Code. Therefore, the appeal of appellant to the extent of the challenge to the conviction u/s 302 and 498(A) is hereby dismissed.

The order of the trial court is modified to the extent referred to above.

Miss Latika Khemani, Advocate for the accused was appointed lawyer. We mention here that the learned counsel has very ably assisted the court and we therefore, quantify fees at Rs.2000/-.

(S.R.SATHE) (S.B.MHASE)